Was the plaintiff a person who had already "voluntarily" done something for the defendant firm?

In *Kalipada Das and another* v. *Durgadas Roy*,[4] it was held that services rendered by the promisee in that case for the promisor had not been done voluntarily within the meaning of section 25(2) of the Indian Contract Act, which on this point is *in pari materia* with our section 26(b), because —

> " They were rendered on request, in pursuance of an agreement to pay a certain remuneration."

In *T. V. Krishna Iyer* v. *The Official Liquidator, The Cape Comorin General Traffic Co. Ltd.*[5], it was held that services rendered by workmen in return for the wages payable to them (and if they have only discharged their duties as requested by the agreement entered into by them with their employers) were not voluntary and no extra compensation promised to them will come within the meaning of the corresponding section of the Indian Contract Act. In *Raja of Venatagiri* v. *Krishnayya*,[6] the Privy Council held that money which had been advanced by the plaintiff to the defendant because of an undertaking given by the plaintiff's father to the defendant had not been advanced voluntarily.

In the instant case the plaintiff found for the defendant firm a company in Holland who was willing to sell confectionery to Lam Ann Thye & Co. It was admitted that this was done at the suggestion of the defendant firm. Had this been done also "in pursuance of an agreement to pay a certain remuneration", then following the decision in *Kalipada Das* v. *Durgadas Roy*[4] the plaintiff had done whatever he did for the defendant firm "voluntarily". But in this case the plaintiff had done what he did at the suggestion of the defendant firm without any agreement by the defendant firm to pay any remuneration. Was such act done "voluntarily"? I can find no case on this very point. The Contracts (Malay States) Ordinance itself does not define "voluntarily". According to note (d) on page 204 of the 8th edition of *Pollock & Mulla* on the Indian Contract Act, Whitley Stokes who had a hand in the drafting of the Indian Act was of the opinion that this word means "otherwise than at the desire of the promisor". The *Shorter Oxford Dictionary* defines voluntary acts as being acts "performed or done of one's own free will, impulse or choice; not constrained, prompted or suggested by another."

In view of this, giving the word "voluntarily" its ordinary every day meaning, I am of the opinion that the act done by the plaintiff for the defendant firm at the latter's suggestion had not been done voluntarily and therefore the promise made without consideration by the defendant firm to compensate the plaintiff is not a contract.

As regards the second transaction, namely, the sale to Sin Lian Hin & Co. of the steel bars, in a letter dated 18th July, 1958, at page 34 of exhibit A, the defendant, writing the plaintiff's solicitors relating to this transaction, referred to the plaintiff company as his principal. In a letter dated 28th July, 1958, at page 35, again, the defendant, this time writing to the Chartered Bank, referred to the plaintiff as his principal, but in none of the letters included in Exhibit A relating to the second transaction did the defendant refer to himself as a *del credere* agent of the plaintiff nor did he make any promise to compensate the plaintiff in any way in respect of the price of the steel bars. Consequently as to this transaction also I find against the plaintiff.

Accordingly the plaintiff's claims are dismissed with costs.

*Claims dismissed.*

Solicitors: *Donaldson & Burkinshaw.*

---

## *Re* CHAN SEK KEONG

**[O.C.J. (Ong J.) January 31, 1962]**

**[K.L. — Petition for Admission No. 33 of 1961]**

*Advocate and Solicitor — Admission — LL.B. (Malaya) — Attendance at post-graduate course organised by the University — Reading in Chambers — Notice — Shortening of — Special grounds — Interpretation of section 5(5) of the Advocates and Solicitors Ordinance, 1947, as amended by Advocates and Solicitors (Amendment) Act, 1961 — Position of law graduates of University of Malaya.*

The petitioner passed the final examination for the degree of Bachelor of Laws of the University of Malaya on January 6, 1961. He attended and completed a post-graduate course of instruction in law organised by the University from February to April 1961. Since May 1, 1961 he had attended at the office of Messrs. Bannon and Bailey, Kuala Lumpur, and received instruction under Mr. Edgar, a practitioner of more than 7 years standing in the Bar of the Federation. On June 10, 1961 the petitioner was conferred the degree of Bachelor of Laws. On September 21, 1961 the Advocates and Solicitors (Amendment) Act No. 35 of 1961 came into force by which "a person upon whom the University of Malaya has conferred the degree of Bachelor of Laws of the University" became a qualified person under section 2 of the said Ordinance. On September 26, the petitioner filed his petition for admission and enrolment together with the notice under section 5(2) of the said Ordinance and the date of last posting of such notice was September 28, 1961. He appeared before the Board of Examiners on November 11, 1961 as required by section 7(1)(a). The petitioner now applied to shorten the period of notice under section 5(4) of the said Ordinance stating as his special ground that but for the delay in passing the Advocates and Solicitors (Amendment) Act No. 35 of 1961, he should have been able to file his petition immediately after receiving the degree of Bachelor of Laws of the University of Malaya on June 10, 1961 in which case he would have been entitled to have his petition heard by the middle of December 1961 without having to invoke the provisions of section 5(5). His petition was opposed by the Bar Council.

**Held:** (1) the words "special grounds" in section 5(5) of the Advocates and Solicitors Ordinance, 1947, do not import a plurality of special grounds. In any event, following the amendments introduced by the Advocates and Solicitors (Amendment) Act, 1961, there was now

included in the definition of qualified persons those who obtained a degree from the University of Malaya, to whom the special ground of having been in active practice as Barrister of England, etc. was not available. Consequently, to insist that such persons should support their petitions with two special grounds would be to place them in a more invidious position than persons who obtained their qualifications abroad. This would be contrary to good sense and also contrary to the rule that a statute must be read as a whole;

(2) the petitioner was conferred his degree three months before the amending Act came into force. This fact alone was a ground of very special character which sufficiently justified the exercise of discretion under section 5(5). As the petitioner was qualified in every other respect except the duration of the posting of the notices, and as there was nothing prejudicial to the public interest to allow the period of posting of the notices to be shortened, the petition was allowed.

*Cases referred to:—*

(1) *Re Richard Chuan Hoe Lim* [1936] M.L.J. 268, 269.
(2) *Re Kim Chwee Chia* [1947] M.L.J. 108, 110.
(3) *Re Harold Leonard Wrigglesworth* [1948] M.L.J. 130.
(4) *Re Joseph Rowlands Devadas* [1949] M.L.J. 239.
(5) *Re G.B. Tiru-Chelvam* [1953] M.L.J. 226.
(6) *Re Thomas Eric Atkinson* [1947] M.L.J. 160.
(7) *Re H.W. Shawcross* [1956] M.L.J. 104.
(8) *Re David Greig Ironside* [1958] M.L.J. 552.

PETITION FOR ADMISSION.

*R. R. Chelliah* for the petitioner.

*R. Ramani* for the Bar Council.

*S. T. Chung* for the Bar Committee.

*Raja Abdul Aziz bin Raja Addruse* (Federal Counsel) for the Attorney-General.

*Cur. Adv. Vult.*

**Ong J.:** On January 11, 1962, Mr. Chelliah, on behalf of the petitioner, moved the Court for an order, first, to shorten the period during which the notice under sub-section (2) of section 5 of the Advocates and Solicitors Ordinance, 1947, is required to be posted, and, second, to admit and enrol the petitioner as an advocate and solicitor of the Supreme Court of the Federation of Malaya forthwith, or at such other date, being less than six months after the date of the last posting of such notice, as the Court may think fit. The petition was opposed by the Bar Council.

The relevant facts are as follows: On January 6, 1961 the petitioner passed the final examinations for the Degree of Bachelor of Laws of the University of Malaya. He duly attended and completed a post-graduate course of instruction in law organised by the University. Since May 1, 1961 he has attended at the office of Messrs. Bannon & Bailey, Kuala Lumpur, and received instruction under Mr. Edgar, a practitioner of more than 7 years' standing in the Bar of the Federation of Malaya. On June 10, 1961 the petitioner was conferred the Degree of Bachelor of Laws, but it was not until September 21, 1961 that the Advocates and Solicitors (Amendment) Act, No. 35 of 1961 came into force, which, for the first time, includes within the category of "qualified person" in section 2 of the Ordinance, "a person upon whom the University of Malaya has conferred the degree of Bachelor of Laws of the University." On September 26, 1961 — that is to say, 5 days later — the petitioner filed his petition for admission and enrolment together with the notice under sub-section (2) of section 5 of the Ordinance. The date of last posting of such notice was September 28, 1961. On November 11, 1961 the petitioner appeared before the Board of Examiners pursuant to section 7(1)(a) and their certificate appears in the file herein.

In the ordinary course the petition cannot be set down for hearing before March 28, 1962 by virtue of the provisions of sub-section (4) of section 5 which require the notices under sub-section (2) to be posted for at least 6 months before the hearing.

Sub-section (5) of section 5, however, gives the Court discretionary powers to shorten the period laid down by sub-section (4). It reads:

" (5) The Court may, on application and on special grounds, one of which may be that the petitioner has been engaged in any part of His Majesty's dominions in the active practice of his profession after having qualified as a Barrister.....by order shorten the period during which the notice referred to in sub-section (2) of this section is required to be posted and may by order shorten or dispense with the period during which the petitioner is required to attend and receive instruction in law in an office or to read in chambers, and may, if it thinks fit, admit and enrol the petitioner at any time."

The special ground, as set out in the affidavit of the petitioner in support of his application, is that, but for the delay in passing the Advocates and Solicitors (Amendment) Act, No. 35 of 1961, he should have been able to file his petition immediately after receiving the degree of Bachelor of Laws of the University of Malaya on June 10, 1961, in which case he should have been entitled to have his petition heard by the middle of December 1961, without having to invoke the provisions of sub-section (5).

The words "on special grounds, one of which may be etc." have in the past been considered on a number of occasions by the Courts in Singapore and in this country, where sub-section (5) of section 5 appeared in identical terms. In *Re Richard Chuan Hoe Lim* [1], Adrian Clark J. said:

" The Legislature has.....intimated, in an amendment to that sub-section, that active practice in any part of His Majesty's dominions may be a special ground justifying this Court in shortening or even dispensing with the periods of time referred to in sub-sections (2) and (3) of section 5."

However, in *Re Kim Chwee Chia* [2] Willan C.J. held that the words "on special grounds one of which may be" mean that there must be at least two special grounds, and that the sub-section "only gives guidance as to what one of those special grounds may be."

In *Re Harold Leonard Wrigglesworth* [3] Pretheroe Ag. C.J. followed the decision of Willan C.J., who again in *Re Joseph Rowlands Devadas* [4] stated that "there must be two special grounds before an order can be made under sub-

section (5)." In *re G.B. Tiru-Chelvam* [5] Mathew C.J. said that "there must be more than one ground for exercising discretion under section 5(5).

On the other hand, in three Singapore cases *Re Thomas Eric Atkinson* [6], *Re H.W. Shawcross*, [7] and *Re David Greig Ironside* [8], it seems quite clear that the Courts there have taken a different view of sub-section (5), in line with that of Adrian Clark J., who in 1936 stated the general principle underlying the requirements of section 5 as being "that persons admitted to practise the law in this Colony should not only have the necessary academic qualifications but should also have practical experience fitting them to deal with every kind of legal work with which an advocate and solicitor of this Court has the right to deal and with which he holds himself out to the public, by the fact of his admission, as being professionally competent to deal."

In *Re Atkinson*, Jobling J. said:

"The policy of section 5(3) is clearly that practitioners shall, before admission, acquire such knowledge and experience of local laws and practice as will ordinarily be obtained by attending at the office of a local practising advocate and solicitor of not less than 7 years' standing for the prescribed period which in the case of this petitioner is 6 months. It follows that any special grounds advanced in support of an application under section 5(5) to shorten the prescribed period must satisfy the Court either, that it is in the public interest or otherwise desirable that this policy should not be strictly adhered to in a particular case, or that the petitioner has acquired the requisite knowledge and experience in a manner or period other than that provided."

Whyatt C.J. in *Re Shawcross* enunciated the same principle as follows:

"In my opinion, the words 'special grounds' are wide and flexible words and to limit their meaning in the manner suggested by the Bar Committee would be to impose upon the Courts greater fetters than the legislature has imposed on them. No Court can or should attempt to lay down an exhaustive definition of these words. Each case must depend upon its own particular facts and it is for the Court to say whether the facts are so special and exceptional as to justify dispensing with the normal procedure of six months' notice and six months' instruction in law prescribed by sub-sections (2) and (3) of section 5. In arriving at its decision, the Court will bear in mind that the object of these provisions is to protect the public and will not sanction any departure from the normal procedure if it considers that course might involve risk to members of the public."

The learned Chief Justice of Singapore in *Ironside's* petition gave his decision in these words:

"The question I have to decide . . . is whether the fact that the petitioner has been in active practice in the Federation since 1951 constitutes special grounds entitling the Court to reduce the statutory period of notice, and if it does, to what extent should I reduce the statutory period . . . As there is nothing special or exceptional about being an advocate and solicitor of seven years' standing, this fact cannot constitute a special ground for the purpose of sub-section (5) of section 5."

On the question whether or not there must be a plurality of the special grounds for an application under sub-section (5), I would respectfully follow the decisions of the Courts across the Straits. I think there are compelling reasons why I should do so. In the interpretation of statutes words in the plural include the singular. Words of limitation are not to be read into a statute if it can be avoided. If, as Willan C.J. had said, the words following "special grounds" are intended to give "guidance as to what one of those special grounds may be," then, it seems to me that clarification by means of a specific example or examples ought not to operate, in effect, as words of limitation as regards the persons concerned by requiring at least two special grounds where otherwise one would have sufficed. At any rate, should I be in error, it has still to be remembered that the previous decisions were given *rebus sic stantibus*. Words cannot be construed effectively without reference to their context. A statute must be read as a whole, and therefore the language of one section may affect the construction of another, so that sub-section (5) must now be read in the light of the amendments introduced by the Act of 1961. Bearing in mind that the new class of qualified persons who have obtained a degree of the University of Malaya cannot possibly be among those who had been in active practice elsewhere as a Barrister of England, etc., that special ground can have no application to them. It is therefore contrary to good sense that they should be placed in a more invidious position than persons who obtain their qualifications abroad, by having to support their application on at least two special grounds, of which one must be considered a privilege exclusively allowed to other qualified persons. Accordingly, I think that in so far as the sub-section is applied to them, it must be read as if the words "one of which may be, etc." do not appear therein. In that event I am unable to see how the words "on special grounds" by themselves must compel me to depart from the line of reasoning which commends itself to their Lordships in the Singapore Court, and. if I may say so, with respect, to myself as well. In the present instance, I am of opinion that the fact that the amending Act came into force three months after the petitioner was conferred his degree is alone a ground of very special character which sufficiently justifies the exercise of my discretion under sub-section (5). In every other respect but the length of the posting of the notices the petitioner is already properly qualified to be admitted and enrolled forthwith as an advocate and solicitor of the Supreme Court of the Federation of Malaya.

I hope I shall not be considered disrespectful to Mr. Ramani who appeared for the Bar Council, and whose task is by no means enviable, if I do not discuss his arguments in detail. In construing sub-section (5) in the circumstances of this case I am reminded of the words of Lord Coke that discretion is a science or understanding to discern between shadows and substance. There is nothing prejudicial to the public interest by allowing the period of posting of the notices in this case to be shortened, upon a ground which is quite exceptional, and for which the petitioner is in no way responsible. The prayers will be allowed.

*Order accordingly.*